United Nations CERD/C/VAT/CO/16-23

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined sixteenth to twenty-third periodic reports of the Holy See*

1. The Committee considered the combined sixteenth to twenty-third periodic reports of the Holy See (CERD/C/VAT/16-23) at its 2394th and 2395th meetings (see CERD/C/SR.2394 and 2395), held on 24 and 25 November 2015. At its 2411th meeting, held on 7 December 2015, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined sixteenth to twenty-third reports of the State party. However, the Committee regrets that the report was submitted with considerable delay, 12 years after the submission of its previous report.

3. The Committee welcomes the open and constructive dialogue with the delegation of the Holy See, as well as its efforts to provide responses to the issues raised by Committee members during the dialogue.

B. Positive measures

4. The Committee welcomes the efforts of the Holy See to promote the aims of the Convention worldwide, including:

(a) The activities undertaken by the various dicasteries of the Holy See, such as the Pontifical Council for Justice and Peace, the Pontifical Council for Culture and the Congregation for Catholic Education, to address ignorance, prejudice and hatred;

(b) The role of the Holy See and the Catholic Church in providing access to education to individuals from disadvantaged and marginalized racial and ethnic minority groups throughout the world;

(c) The emphasis given by Pope Francis to the importance of fighting poverty, given the intersectionality between poverty and racial discrimination, as the poor are often individuals from marginalized racial or ethnic groups in society;

(d) The numerous forceful statements of the Pope condemning racism and fostering intercultural and interreligious understanding and tolerance, including statements in support of refugees and migrants. The Committee underscores the importance of such

* Adopted by the Committee at its eighty-eighth session (23 November-11 December 2015).

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statements by high-level officials to promote a culture of tolerance and respect and to combat xenophobia and racist discourse, as outlined by the Committee in its general recommendation No. 35 (2013) on combating racist hate speech. The Committee commends the recent appeal made by Pope Francis for every Catholic parish, religious community, monastery and sanctuary in Europe to take in one refugee family that has fled conflict and poverty.

5. The Committee welcomes the efforts made by the State party to implement the Committee's previous concluding observations to bring its legislation into line with the requirements of the Convention (see CERD/C/304/Add.89, para. 9), in particular the promulgation in July 2013 of Vatican City State Law No. VIII, on supplementary norms on criminal law matters, and Law No. IX, containing amendments to the criminal code and the criminal procedure code. The Committee also welcomes the issuance *motu proprio* by Pope Francis on 11 July 2013 of an apostolic letter on the jurisdiction of judicial authorities of Vatican City State in criminal matters. This letter establishes jurisdiction by the judicial authorities of Vatican City State over offences referred to in Laws No. VIII and IX, including when such crimes are committed outside of Vatican City State by public officials and citizens.

C. Concerns and recommendations

Applicability and scope of the Convention

6. The Committee notes with concern the State party's position as stated in its report regarding the scope of the Committee's competence under article 9 (2) of the Convention, as well as its views that some of the recommendations of the Committee "add new terminology or create new obligations" for the State party (see CERD/C/VAT/16-23, para. 3 (c) and (d)). The Committee also notes the State party's objection to the content of the Committee's general recommendations, which in its view have extended the scope of the Convention, in particular with regard to intersectionality, including the intersectionality of race and gender, and the Durban Declaration and Programme of Action (art. 9).

7. **The Committee reminds the State party that the role of the Committee is not limited to calling attention to specific violations of the Convention, but also, in accordance with article 9 (2) of the Convention, includes making suggestions and general recommendations so as to provide guidance to States parties regarding measures that, in the view of the Committee, would improve protection against racial discrimination and advance the goal of eliminating such discrimination. The Committee welcomes the willingness of the State party, expressed during the dialogue, to reconsider its position on the matters noted in paragraph 6 above, and invites the State party to engage with the Committee's recommendations, including those that refer to intersectionality and to the Durban Declaration and Programme of Action, which elaborates best practices for States parties to take into account when formulating and implementing their policies and activities to combat racial discrimination.**

Legislative framework

8. While noting that some of the offences enumerated in article 4 of the Convention are prohibited under Law No. VIII, on supplementary norms on criminal law matters, the Committee is concerned that racial discrimination, as opposed to incitement to such discrimination, is not expressly prohibited, as contemplated by article 2 (1) (d) of the Convention. It also notes the lack of clarity regarding: (a) whether there is prosecutorial discretion to seek a punishment of less than the minimum specified in the law or to decide against criminal prosecution for less serious crimes; and (b) which laws and procedures

apply with regard to acts of racial discrimination attributable to, respectively, citizens and officials of Vatican City State, officials of the Holy See and officials of the Catholic Church (arts. 2 and 4).

9. **The Committee recommends that the State party adopt legislative measures to prohibit racial discrimination, as contemplated under article 2 (1) (d) of the Convention. It also requests the State party to provide, in its next periodic report, further information clarifying both civil and criminal prohibition of acts of racial discrimination as they apply, respectively, to citizens and officials of Vatican City State, officials of the Holy See and officials of the Catholic Church. In addition, the Committee seeks clarification on whether there is prosecutorial discretion to seek a punishment of less than the minimum specified in the law, or to decide against criminal prosecution, for less serious violations, as recommended in paragraph 12 of the Committee's general recommendation No. 35.**

Access to remedies

10. The Committee is concerned that the law may not ensure the availability of remedies and compensation for racial discrimination, as contemplated by article 6 of the Convention. While noting the State party's explanation that the penal laws of Vatican City State allow access to just and adequate compensation for any damage suffered (see CERD/C/VAT/16-23, para. 26), the Committee notes that Law No. VIII does not penalize racial discrimination, as opposed to incitement to such discrimination. With respect to offences that are penalized by Law No. VIII, the Committee is concerned that the opportunity to obtain compensation in conjunction with penal prosecution may not satisfy article 6 of the Convention insofar as a victim's ability to obtain compensation depends on a decision by the promoter of justice to seek criminal penalties. The Committee is further concerned that a complainant seeking compensation in conjunction with a criminal prosecution may be held to an excessively high burden of proof (art. 6).

11. **The Committee recommends that the State party review its legal framework for obtaining remedies and compensation for racial discrimination and promulgate amendments to ensure that it accords with the requirements of article 6 of the Convention. The Committee requests the State party to provide, in its next periodic report, further information on mechanisms available to victims of racial discrimination to seek remedies and on the applicable standard of burden of proof in proceedings seeking such remedies, including specifically whether the burden of proof shifts to the defendant at any point.**

Monitoring and handling of cases of racial discrimination

12. While noting the information that a special office within the Governorate of Vatican City State was established in August 2013 to oversee the implementation of international agreements to which the Holy See is a party, the Committee remains concerned at the lack of a national human rights institution or other effective mechanism to monitor, receive and address cases of racial discrimination by individuals and institutions operating under its authority (arts. 2 and 6).

13. **The Committee recommends that the State party establish an independent mechanism to monitor the implementation of the Convention with regard to individuals and institutions that function under the authority of the Holy See. This mechanism should be provided with adequate human, financial and technical resources to fulfil its mandate. The Committee also requests further information on the work of the special office and whether it is mandated to receive and address complaints of racial discrimination.**

Diversity in leadership positions

14. While welcoming the efforts made by Pope Francis to promote diversity among cardinals, the Committee is concerned at the continuing underrepresentation of ethnic minorities in leadership positions. The Committee also regrets the lack of disaggregated data in the State party report, notwithstanding its statement made in 2000 during the previous dialogue with the Committee that it would provide such information (see CERD/C/SR.1425, para. 53) (art. 2).

15. **The Committee encourages the State party to intensify its efforts to ensure ethnic diversity throughout its governance structure and decision-making bodies. The Committee requests that the State party provide, in its next periodic report, detailed disaggregated data on the composition of its leadership and senior positions.**

Indigenous peoples

16. While welcoming the statement made by Pope Francis in the Plurinational State of Bolivia in July 2015, in which he apologized for the actions of the Catholic Church in the context of colonialism against indigenous peoples in the Americas, the Committee notes the concerns expressed by indigenous peoples regarding the current legacy and effects of the Doctrine of Discovery endorsed in the *Inter Caetera* from 1493 and its related papal bulls, as well as other issues (arts. 2, 5 and 6).

17. **The Committee recommends that the State party engage in meaningful dialogue with indigenous peoples with the aim of effectively addressing their concerns. In this regard, the Committee takes note of the information provided by the State party delegation concerning a high-level dialogue that is scheduled to take place in Rome to address the concerns expressed by indigenous peoples, and recommends that the State party ensure that its interlocutors in this dialogue include appropriate representatives designated by indigenous peoples. The Committee requests the State party to provide information in its next periodic report on the outcome of the meeting and concrete follow-up measures taken.**

Accountability for the Rwandan genocide

18. The Committee welcomes the State party's acknowledgement of the involvement of Catholic clergy in the Rwandan genocide (see CERD/C/VAT/16-23, para. 33), as well as the various statements and activities of the Holy See to promote reconciliation and peace in Rwanda. While noting that several members of the Catholic clergy who were implicated in the genocide have been tried in national courts or the International Criminal Tribunal for Rwanda, the Committee notes that some may have yet to be brought to account, including Father Wenceslas Munyeshyaka, former head of the Sainte-Famille parish in Kigali, who fled to France in 1995 (arts. 2, 4, 5 and 6).

19. **The Committee recommends that the State party intensify its efforts to uncover criminal responsibility for the genocide in Rwanda, providing all relevant information to national authorities that have claimed prosecutorial jurisdiction, as appropriate, and pursue any available measures through its own justice mechanism, including, as appropriate, the application of penal canon law.**

Discriminatory acts by Catholic clergy and officials

20. The Committee notes the statement of the State party that, when it ratifies or accedes to international agreements, it "manifests its moral authority and thereby encourages States to ratify the treaty and to accomplish their respective obligations". While noting the State party's position that "the Church as such cannot be held responsible for the transgressions of its members who have acted against the precepts of evangelical law" (see

CERD/C/VAT/16-23, para. 33), and mindful of the need to avoid interference in the domestic affairs of the States in which the Church operates, the Committee is concerned that the State party's efforts to use its moral authority to promote the aims of the Convention may be undermined by reported instances of racial discrimination by persons holding official roles in the Catholic Church in some parts of the world (arts. 2, 5 and 7).

21. **The Committee encourages the State party to employ mechanisms at its disposal to promote sensitivity among the Catholic clergy, religious orders, societies and congregations to issues of racial discrimination, including in particular through education and training for personnel at all levels. The Committee encourages the State party, through its Pontifical Council for Justice and Peace, or through an interdicasterial commission or other appropriate structures, to elaborate a document providing guidance to Catholic clergy and the Catholic faithful regarding the importance of racial tolerance and understanding and of combating racial discrimination.**

D. Other recommendations

Ratification of other treaties

22. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and their Optional Protocols; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

Follow-up to the Durban Declaration and Programme of Action

23. **While noting the State party's objection to including information in its periodic report on action plans or other measures taken to implement the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference, given that these documents are "broader in scope than the Convention and are not legally binding", the Committee wishes to reiterate its recommendations in paragraph 7 above. In line with its mandate to make suggestions and recommendations, the Committee encourages the State party to review its position and, in the spirit of promoting best practices, take into account these documents as useful policy guidelines in its efforts to combat racial discrimination, and recommends that the State party provide information in its next periodic report in this regard.**

International Decade for People of African Descent

24. **The Committee welcomes the willingness expressed by the delegation of the Holy See to adopt an encyclical or other appropriate public statement addressing the importance of combating racial discrimination against people of African descent, which in the Committee's view can play an important role in providing moral redress for the involvement of the Catholic Church in the transatlantic slave trade and the harsh policies of colonialism in Africa. The Committee encourages the State party to hold a high-level dialogue with representatives of people of African descent on the role of the Catholic Church in the transatlantic slave trade and its consequences. In this regard, the Committee encourages the Holy See to take into account the International Decade for People of African Descent (2015-2024), proclaimed by the General**

Assembly in its resolution 68/237, in addition to Assembly resolution 69/16, on the programme of activities for the implementation of the Decade, and the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

25. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Dissemination

26. **The Committee recommends that the reports of the Holy See be made readily available and accessible to the public at the time of their submission, and that the concluding observations of the Committee with respect to those reports be similarly made available to all State bodies that are competent with regard to the implementation of the Convention, in commonly used languages, as appropriate.**

Common core document

27. **The Committee encourages the Holy See to submit its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on a common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (see HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

28. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its follow-up to the recommendations contained in paragraphs 9, 17 and 24 above.**

Paragraphs of particular importance

29. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 15 and 21 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Preparation of the next periodic report

30. **The Committee recommends that the State party submit its twenty-fourth and twenty-fifth periodic reports, as a single document, by 21 May 2018, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**